

**Survey of Western States' Change Application Statutes
Regarding Role of Administrative Determinations of Forfeiture/Nonuse/Historic Beneficial Use
May 14, 2008**

STATE/ CHANGE STATUTE	CHANGE APPLICATION DECISION MAKER/ RECONSIDERATION/ APPEALS	ROLE OF FORFEITURE/ NONUSE/ HISTORIC BENEFICIAL USE IN CHANGE APPLICATION PROCEEDINGS	ADMINISTRATIVE OR JUDICIAL FORFEITURE/ STATUTE ¹
Alaska 46.15.160 & AAC	Commissioner of Dept. of Natural Resources/ Director of Dept. of Natural Resources/ Superior Court	Change permit may not be issued if the Commissioner finds that the appropriation proposed to be changed has been abandoned or forfeited. 11 AAC 93.930 (2008)	Administrative. Commissioner declares forfeiture. 46.15.140
Arizona 45-172	Director of Dept. of Water Resources/ Director/ Judicial Review	The water diverted under the transfer shall not exceed the existing vested rights. The water rights sought to be transferred shall not have been forfeited or abandoned. 45-172 (2008)	Administrative. Director gives notice of administrative hearing. 45-189 (2007)
California 1700, et seq.	Water Resources Control Board or as delegated to an officer or employee of Board/ Control Board/ State Courts	Change must not increase the amount of water the person is entitled to use. 1707(b)(1)	Administrative. Control Board makes findings of forfeiture. 1227.4 and 1241
Colorado 37-92-301, et seq.	Water Court Referee or Water Court Judge (receives report from and consults with State Engineer or District Engineer)/ Water Court Judge (State Engineer represented by AG's Office)/ Colorado Supreme Court	Applicant must submit map showing approx. location of historic use along with records or summaries of actual diversions. Approval may place limitation on use of water, including: taking into consideration the historical use; relinquishing rights to prevent enlargement upon historical use or diminution of return flow; for rotational crop management—annual historic consumptive use limits.	Water Court Adjudication. Notice and opportunity to respond required before abandonment is declared.

<p>Idaho</p> <p>42-222</p>	<p>Director of Dept. of Water Resources (receives recommendation from District Watermaster)/ Director/ Judicial Review</p>	<p>The Director may consider consumptive use as a factor in determining whether a proposed change would constitute an enlargement. Consumptive use means that portion of the annual volume of water diverted under a water right that is transpired by growing vegetation, evaporated from soils, converted to nonrecoverable water vapor, incorporated into products, or otherwise does not return to the waters of the state. The transfer of a storage right for irrigation shall not constitute an enlargement even though more acres may be irrigated, if no other water rights are injured thereby.</p>	<p>Administrative. Director brings notice of forfeiture.</p> <p>42-350</p>
<p>Montana</p> <p>85-2-307, et seq.</p>	<p>Department of Natural Resources and Conservation/ Department/ Judicial Review</p>	<p>Adjudication of existing water rights in general adjudications is not required before filing a change. In determining a change application, the Department may not alter the terms and conditions of an existing water right or an issued certificate, permit, or state water reservation.</p>	<p>Administrative. If water is not applied to beneficial use, Department may require holder to show cause why the permit or change should not be revoked.</p> <p>85-2-314</p>
<p>Nevada</p> <p>533.325, et seq.</p>	<p>State Engineer/ ?/ County District Court</p>	<p>Nothing specific.</p>	<p>Judicial.</p> <p>533-060</p>
<p>New Mexico</p> <p>72-5-23, et seq.</p>	<p>State Engineer/ ?/ District Court</p>	<p>Nothing specific other than “if such changes can be made without detriment to existing water rights.”</p>	<p>Administrative. State Engineer gives notice after 4th year of nonuse. After 5th year of nonuse, rights revert back to public.</p> <p>72-5-28</p>

Oregon 540.520, et seq.	Director of Water Resources Department and Water Resources Commission/ ?/ Judicial Review	The change application shall include evidence that the water has been used over the past five years according to the terms and conditions of the owner’s water right certificate or that the water right is not subject to forfeiture.	Administrative. Commission initiates proceedings to cancel forfeited water rights. 540.631 and .641
Utah 73-3-3 and - 8	State Engineer/ State Engineer/ District Court	Nothing specific other than “a change may not be made if it impairs a vested water right without just compensation.” (This question is now before the Executive Water Rights Task Force.)	Judicial. 73-1-4
Washington 90.03.255, et seq.	Department of Ecology/ Pollution Control Hearings Board/ Superior Court	A change may be permitted if such change results in no increase in the annual consumptive quantity of water used under the water right. Annual consumptive quantity means the estimated or actual annual amount of water diverted pursuant to the water right, reduced by the estimated annual amount of return flows, averaged over the two years of greatest use within the most recent five-year period of continuous beneficial use of the water right.	Administrative. Initiated by Department. 90.14.130
Wyoming 41-3-103, et seq.	Board of Control or the State Engineer/ Board of Control/ District Court	The change may be allowed provided that the quantity of water transferred by the petition shall not exceed the amount of water historically diverted under the existing use, nor exceed the historic rate of diversion under the existing use, nor increase the historic amount consumptively used under the existing use, nor decrease the historic amount of return flow, nor in any manner injure other existing lawful appropriators.	Administrative. Initiated by State Engineer. 41-3-402

¹ This column is taken from “Water Rights Forfeiture Statutory Appendix” and accompanying Table updated July 1, 2007, distributed by Rep. Patrick Painter.